

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HEATHER KIERNAN,

Plaintiff,

-v-

CIVIL ACTION NO. 04-10131 RBC

ARMORED MOTOR SERVICE OF
AMERICA, INC. and
FRANCESCO CIAMBRIELLO,

Defendants.

**PLAINTIFF HEATHER KIERNAN'S
SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF HER
CONSOLIDATED MOTION TO COMPEL THE DEPOSITION OF THE KEEPER
OF THE RECORDS OF THE HARTFORD INSURANCE COMPANY AND
MOTION FOR SANCTIONS FOR FAILURE TO OBEY SUBPOENA**

Since Plaintiff filed her Motion seeking an order compelling the Hartford Insurance Company, the following events have occurred:

1. On or about December 17, 2004, after Plaintiff's counsel left the office for the day, Michael Johnson, a paralegal from the Hartford Legal Department left Plaintiff's counsel a message regarding the subpoena and the Motion to Compel.
2. Plaintiff's counsel returned the call on Monday, December 20, 2004 by leaving a message. The parties spoke for the first time on December 21, 2004.
3. During that conversation, Mr. Johnston cited a number of reasons why the Hartford did not comply with the subpoena, including that the person who was to follow up on the subpoena retired.

4. On December 27, 2004, Plaintiff's counsel received a message from Nathaniel Miller of the Hartford informing Plaintiff's counsel that he documents were en route.
5. On Wednesday, December 29, Plaintiff's counsel informed the Court that he was attempting to resolve the issues with the Hartford. The Court instructed Plaintiff's to inform the Court by letter if the issues raised by Plaintiff's Motion were moot.
6. On Wednesday, December 29, Plaintiff's counsel received documents from the Hartford by certified mail. The documents were accompanied only by a letter from a Nathaniel Miller dated December 22, 2004.¹
7. After receipt of the documents, on the same date, Plaintiff contacted Mr. Johnson and told him that he required an affidavit from the Keeper of the Records. Mr. Johnson assured him in that conversation that it would be forthcoming.
8. On Monday, January 10, 2005, Mr. Miller contacted Plaintiff's counsel to request that the invoice for the court reporter expenses Plaintiff is seeking reimbursement of be faxed to him at a number provided. Shortly thereafter, Plaintiff faxed that invoice.
9. On Thursday, January 27, 2005, Plaintiff's counsel left a detailed message on Mr. Johnson's voice mail, requesting that he provide Plaintiff's counsel with an update on both the affidavit and the

¹ The letter states "Dear Attorney McLeod, Enclosed is a copy of the file as requested. If you have any questions, I can be reached at 877-469-9222 x53557. Sincerely, Nathaniel Miller, Subrogation Specialist."

payment of the invoice, and further, that he provide the undersigned the fax number for the legal department.

10. As of the date of this filing, no response has been received.
11. Without an affidavit of the Keeper of the Records, the documents submitted have no evidentiary value to any party in this matter. In fact, Plaintiff cannot determine whether the Hartford has, in fact, complied with the subpoena.

WHEREFORE, for all of the foregoing reasons, the Plaintiff respectfully requests that her Motion to Compel the Deposition of the Keeper of the Records of the Hartford Insurance Company be granted, and that the Hartford be sanctioned for its willful violation of the subpoena.

Plaintiff also respectfully requests any other relief that this Court deems equitable, just and proper.

Local Rule 7.1(A)(2) Certification

The undersigned represents that he attempted in good faith to reach the Hartford to discuss compliance with the subpoena, but did not receive any response.

Respectfully submitted:

THE PLAINTIFF,
Heather Kiernan
By her attorney,

Dated: February 3 2005

/s/ William J. McLeod
William J. McLeod BBO #560572
McLeod Law Offices, PC
77 Franklin Street
Boston, MA 02110
(617) 542-2956

CERTIFICATE OF SERVICE

I hereby certify that on February 3 2005, a true and complete copy of this document was served via first class mail upon:

Legal Department
The Hartford Insurance Company
690 Asylum Avenue
Hartford, CT 06115
VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
7004 2510 0000 9260 8734

AND

Stacy Segan
Legal Department
Division of Insurance for the Commonwealth
One South Station
Boston, MA 02110
Authorized agent for the Hartford Insurance Company

/s/ William J. McLeod
William J. McLeod